



General Assembly

Amendment

January Session, 2013

LCO No. 8797

SB0085208797HD0

Offered by:

REP. ABERCROMBIE, 83rd Dist.

To: Subst. Senate Bill No. **852**

File No. 339

Cal. No. 625

"AN ACT CONCERNING NURSING HOME OVERSIGHT AND COMMUNITY-BASED PLACEMENTS."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (a) of section 17b-340 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2013*):

6 (a) The rates to be paid by or for persons aided or cared for by the
7 state or any town in this state to licensed chronic and convalescent
8 nursing homes, to chronic disease hospitals associated with chronic
9 and convalescent nursing homes, to rest homes with nursing
10 supervision, to licensed residential care homes, as defined by section
11 19a-490, and to residential facilities for the mentally retarded which are
12 licensed pursuant to section 17a-227 and certified to participate in the
13 Title XIX Medicaid program as intermediate care facilities for the
14 mentally retarded, for room, board and services specified in licensing
15 regulations issued by the licensing agency shall be determined

16 annually, except as otherwise provided in this subsection, after a
17 public hearing, by the Commissioner of Social Services, to be effective
18 July first of each year except as otherwise provided in this subsection.
19 Such rates shall be determined on a basis of a reasonable payment for
20 such necessary services, which basis shall take into account as a factor
21 the costs of such services. Cost of such services shall include
22 reasonable costs mandated by collective bargaining agreements with
23 certified collective bargaining agents or other agreements between the
24 employer and employees, provided "employees" shall not include
25 persons employed as managers or chief administrators or required to
26 be licensed as nursing home administrators, and compensation for
27 services rendered by proprietors at prevailing wage rates, as
28 determined by application of principles of accounting as prescribed by
29 said commissioner. Cost of such services shall not include amounts
30 paid by the facilities to employees as salary, or to attorneys or
31 consultants as fees, where the responsibility of the employees,
32 attorneys, or consultants is to persuade or seek to persuade the other
33 employees of the facility to support or oppose unionization. Nothing
34 in this subsection shall prohibit inclusion of amounts paid for legal
35 counsel related to the negotiation of collective bargaining agreements,
36 the settlement of grievances or normal administration of labor
37 relations. The commissioner may, in his or her discretion, allow the
38 inclusion of extraordinary and unanticipated costs of providing
39 services which were incurred to avoid an immediate negative impact
40 on the health and safety of patients. The commissioner may, in his or
41 her discretion, based upon review of a facility's costs, direct care staff
42 to patient ratio and any other related information, revise a facility's
43 rate for any increases or decreases to total licensed capacity of more
44 than ten beds or changes to its number of licensed rest home with
45 nursing supervision beds and chronic and convalescent nursing home
46 beds. The commissioner may so revise a facility's rate established for
47 the fiscal year ending June 30, 1993, and thereafter for any bed
48 increases, decreases or changes in licensure effective after October 1,
49 1989. Effective July 1, 1991, in facilities which have both a chronic and
50 convalescent nursing home and a rest home with nursing supervision,

51 the rate for the rest home with nursing supervision shall not exceed
52 such facility's rate for its chronic and convalescent nursing home. All
53 such facilities for which rates are determined under this subsection
54 shall report on a fiscal year basis ending on the thirtieth day of
55 September. Such report shall be submitted to the commissioner by the
56 thirty-first day of December. Each for-profit chronic and convalescent
57 nursing home and rest home with nursing supervision which receives
58 state funding pursuant to this section shall include in such annual
59 report a profit and loss statement from each related party that receives
60 from such for-profit chronic and convalescent nursing home ten
61 thousand dollars or more a year for goods, fees and services. Each
62 chronic and convalescent nursing home and rest home with nursing
63 supervision which receives state funding pursuant to this section shall
64 provide in such annual report detailed information on direct care staff,
65 including, but not limited to: (1) Regular hours and wages, (2)
66 overtime hours and wages, (3) benefit hours and wages, and (4)
67 employee health and welfare benefits. Each direct care and
68 administrative nurse position shall be reported as a separate line item.
69 For purposes of this subsection, (A) a "related party" includes, but is
70 not limited to, any company related to such for-profit chronic and
71 convalescent nursing home through family association, common
72 ownership, control or business association with any of the owners,
73 operators or officials of such nursing home; (B) "company" means any
74 person, partnership, association, company, holding company, limited
75 liability company or corporation; (C) "family association" means a
76 relationship by birth, marriage or domestic partnership; and (D) "profit
77 and loss statement" means the most recent annual statement on profits
78 and losses finalized by a related party before the annual report
79 mandated under this subsection. The commissioner may reduce the
80 rate in effect for a facility which fails to report on or before such date
81 by an amount not to exceed ten per cent of such rate. The
82 commissioner shall annually, on or before the fifteenth day of
83 February, report the data contained in the reports of such facilities to
84 the joint standing committee of the General Assembly having
85 cognizance of matters relating to appropriations. For the cost reporting

86 year commencing October 1, 1985, and for subsequent cost reporting
87 years, facilities shall report the cost of using the services of any nursing
88 pool employee by separating said cost into two categories, the portion
89 of the cost equal to the salary of the employee for whom the nursing
90 pool employee is substituting shall be considered a nursing cost and
91 any cost in excess of such salary shall be further divided so that
92 seventy-five per cent of the excess cost shall be considered an
93 administrative or general cost and twenty-five per cent of the excess
94 cost shall be considered a nursing cost, provided if the total nursing
95 pool costs of a facility for any cost year are equal to or exceed fifteen
96 per cent of the total nursing expenditures of the facility for such cost
97 year, no portion of nursing pool costs in excess of fifteen per cent shall
98 be classified as administrative or general costs. The commissioner, in
99 determining such rates, shall also take into account the classification of
100 patients or boarders according to special care requirements or
101 classification of the facility according to such factors as facilities and
102 services and such other factors as he or she deems reasonable,
103 including anticipated fluctuations in the cost of providing such
104 services. The commissioner may establish a separate rate for a facility
105 or a portion of a facility for traumatic brain injury patients who require
106 extensive care but not acute general hospital care. Such separate rate
107 shall reflect the special care requirements of such patients. If changes
108 in federal or state laws, regulations or standards adopted subsequent
109 to June 30, 1985, result in increased costs or expenditures in an amount
110 exceeding one-half of one per cent of allowable costs for the most
111 recent cost reporting year, the commissioner shall adjust rates and
112 provide payment for any such increased reasonable costs or
113 expenditures within a reasonable period of time retroactive to the date
114 of enforcement. Nothing in this section shall be construed to require
115 the Department of Social Services to adjust rates and provide payment
116 for any increases in costs resulting from an inspection of a facility by
117 the Department of Public Health. Such assistance as the commissioner
118 requires from other state agencies or departments in determining rates
119 shall be made available to [him] the commissioner at his or her request.
120 Payment of the rates established hereunder shall be conditioned on the

121 establishment by such facilities of admissions procedures which
122 conform with this section, section 19a-533 and all other applicable
123 provisions of the law and the provision of equality of treatment to all
124 persons in such facilities. The established rates shall be the maximum
125 amount chargeable by such facilities for care of such beneficiaries, and
126 the acceptance by or on behalf of any such facility of any additional
127 compensation for care of any such beneficiary from any other person
128 or source shall constitute the offense of aiding a beneficiary to obtain
129 aid to which he or she is not entitled and shall be punishable in the
130 same manner as is provided in subsection (b) of section 17b-97. For the
131 fiscal year ending June 30, 1992, rates for licensed residential care
132 homes and intermediate care facilities for the mentally retarded may
133 receive an increase not to exceed the most recent annual increase in the
134 Regional Data Resources Incorporated McGraw-Hill Health Care
135 Costs: Consumer Price Index (all urban)-All Items. Rates for newly
136 certified intermediate care facilities for the mentally retarded shall not
137 exceed one hundred fifty per cent of the median rate of rates in effect
138 on January 31, 1991, for intermediate care facilities for the mentally
139 retarded certified prior to February 1, 1991. Notwithstanding any
140 provision of this section, the Commissioner of Social Services may,
141 within available appropriations, provide an interim rate increase for a
142 licensed chronic and convalescent nursing home or a rest home with
143 nursing supervision for rate periods no earlier than April 1, 2004, only
144 if the commissioner determines that the increase is necessary to avoid
145 the filing of a petition for relief under Title 11 of the United States
146 Code; imposition of receivership pursuant to sections 19a-541 to 19a-
147 549, inclusive; or substantial deterioration of the facility's financial
148 condition that may be expected to adversely affect resident care and
149 the continued operation of the facility, and the commissioner
150 determines that the continued operation of the facility is in the best
151 interest of the state. The commissioner shall consider any requests for
152 interim rate increases on file with the department from March 30, 2004,
153 and those submitted subsequently for rate periods no earlier than
154 April 1, 2004. When reviewing a rate increase request the
155 commissioner shall, at a minimum, consider: [(1)] (i) Existing chronic

156 and convalescent nursing home or rest home with nursing supervision
157 utilization in the area and projected bed need; [(2)] (ii) physical plant
158 long-term viability and the ability of the owner or purchaser to
159 implement any necessary property improvements; [(3)] (iii) licensure
160 and certification compliance history; [(4)] (iv) reasonableness of actual
161 and projected expenses; and [(5)] (v) the ability of the facility to meet
162 wage and benefit costs. No rate shall be increased pursuant to this
163 subsection in excess of one hundred fifteen per cent of the median rate
164 for the facility's peer grouping, established pursuant to subdivision (2)
165 of subsection (f) of this section, unless recommended by the
166 commissioner and approved by the Secretary of the Office of Policy
167 and Management after consultation with the commissioner. Such
168 median rates shall be published by the Department of Social Services
169 not later than April first of each year. In the event that a facility
170 granted an interim rate increase pursuant to this section is sold or
171 otherwise conveyed for value to an unrelated entity less than five years
172 after the effective date of such rate increase, the rate increase shall be
173 deemed rescinded and the department shall recover an amount equal
174 to the difference between payments made for all affected rate periods
175 and payments that would have been made if the interim rate increase
176 was not granted. The commissioner may seek recovery from payments
177 made to any facility with common ownership. With the approval of
178 the Secretary of the Office of Policy and Management, the
179 commissioner may waive recovery and rescission of the interim rate
180 for good cause shown that is not inconsistent with this section,
181 including, but not limited to, transfers to family members that were
182 made for no value. The commissioner shall provide written quarterly
183 reports to the joint standing committees of the General Assembly
184 having cognizance of matters relating to aging, human services and
185 appropriations and the budgets of state agencies, [and to the select
186 committee of the General Assembly having cognizance of matters
187 relating to aging,] that identify each facility requesting an interim rate
188 increase, the amount of the requested rate increase for each facility, the
189 action taken by the commissioner and the secretary pursuant to this
190 subsection, and estimates of the additional cost to the state for each

191 approved interim rate increase. Nothing in this subsection shall
192 prohibit the commissioner from increasing the rate of a licensed
193 chronic and convalescent nursing home or a rest home with nursing
194 supervision for allowable costs associated with facility capital
195 improvements or increasing the rate in case of a sale of a licensed
196 chronic and convalescent nursing home or a rest home with nursing
197 supervision, pursuant to subdivision (15) of subsection (f) of this
198 section, if receivership has been imposed on such home."

This act shall take effect as follows and shall amend the following sections:

Sec. 501	<i>July 1, 2013</i>	17b-340(a)
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